Supreme Court, U. S.
FILED
FEB 5 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

NO. 79-1206

WILLIAM D. RUFFIN, et al., Petitioners,

v.

THE COUNTY OF LOS ANGELES, and
PETER J. PITCHESS, SHERIFF, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN M. SINK
1114 State Street, #249
Santa Barbara, CA 93101
(805) 963-4266

Lawyer for Petitioners

Cert. Fed. 1276, 21 Pet Crim 2

INDEX

OPINION BELOW 3
JURISDICTION 4
QUESTIONS PRESENTED 4
STATUTORY PROVISIONS INVOLVED 6
United States Code, Title 29 6
United States Code, Title 42 7
STATEMENT OF THE CASE 7
REASONS FOR GRANTING THE WRIT 10
I. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF THIS COURT AND OF OTHER COURTS OF APPEAL AS TO THE PROPER INTERPRETATION OF 29 U.S.C. § 206(d)(1) 10
II. THE MANNER IN WHICH THE COURT OF APPEALS AFFIRMED THIS SUMMARY JUDGMENT MAY PRESENT AN APPROPRIATE CASE FOR THE EXERCISE OF THIS COURT'S SUPERVISORY POWERS . 15
CONCLUSION 20
APPENDIX (Findings of Fact and Conclusions of Law of District Court) A-1
APPENDIX (Judgment of District Court) A-5
APPENDIX (Opinion of Court of Appeals) A-7

TABLE OF AUTHORITIES CITED

CASES

Board of Regents of the University of Nebraska v. Dawes, 522 F.2d 380,384 (8th Cir. 1975), *cert. den.*, 424 U.S. 914 (1976) 12
Corning Glass Works v. Brennan, 417 U.S. 188, 205-208, 94 S.Ct. 2223, 41 L.Ed.2d 1, 16-17 (1974) 11,12,15
Hodgson v. American Bank of Commerce, 447 F.2d 416, 421 (5th Cir. 1971) 13
Hodgson v. Miller Brewing Co., 457 F.2d 221, 226-227 (7th Cir. 1972) 12,17
Hodgson v. Square D Co., 459 F.2d 805, 808-809 (6th Cir. 1972) 12
Marshall v. J. C. Penney Co., Inc., 464 F.Supp. 1166, 1193 (N.D. Ohio 1979) 14
Peltier v. City of Fargo, 533 F.2d 374, 377 (8th Cir. 1976) . . . 17
Schultz v. American Can Co.-Dixie Products, 424 F.2d 356, 359 (8th Cir. 1970) 11,12

STATUTES

28 U.S.C. § 1254(1) 4
§ 2101(c) 4
§ 1337 8

29 U.S.C. § 206(d) 7
§ 206(d)(1) 6,10,14
§ 216(b) 8
§ 217 8

42 U.S.C. § 2000e-2 7
§ 2000e-5(f)(3) 8

COURT RULES

Fed. R. Civ. Proc., Rule 56 5

ADMINISTRATIVE REGULATIONS

29 C.F.R. § 800.121 17
§ 800.148 8

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

NO.

WILLIAM D. RUFFIN, et al., Petitioners,

v.

THE COUNTY OF LOS ANGELES, and
PETER J. PITCHESS, SHERIFF, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Petitioners William D. Ruffin, Robert E. Skaggs, Harris J. DeJean, August N. Laggren, Leonard S. Duncan, Vincent Miscione, Kenneth E. Parks, Arthur R. Thompson, John R. Haycox, David O. Miller, Edward A. Bakos, Manuel G. Gonzalez, Harold E. Rogers, Waymon L. Scroggins, Roy D. Stout, Raymond B. Milton, Ralph Brasacchio,

Michael Cerula, Jr., Lynn E. Miles, Edward Stoffel, Herman Benson, Sr., James H. Bolander, Ronald W. Craigo, Lauren D. Ray, James K. Rupert, Bryan Trout, Donald E. Peters, John C. West, Harold Hayman, Raymond A. Dombroski, Edward A. Goldschmidt, Daniel A. Koledi, Wesley W. Schmidt, Frank Svenson, Gary M. Hailey, Floyd Parry, Donald E. Wilder, Robert B. Bartlett, Daniel Clarke, Mark T. Towles, Alvin Williams, Ray W. Hart, Gary L. Wolski, John Heard, Floyd L. Patterson, Dennis L. Sapp, Douglas W. Boord, Peter V. Bell, Johnny E. Brown, Jerry D. Fetter, James W. Gilbert, Raymond C. Ramirez, Donald L. Goodman, Russell C. Wolfe, Algirdas Stropus, Heinz Seeger, Harold W. Beith, Raymond P. Sanders, Ronald S. Taggart, Gene York, Stanley A. Burrus; Daryl R. Vestal, Heinze W. Weyer, Larry J. Agnew, Don K. Rader, Edward E. Nelson, Woodrow L. Wilson, Eusebio S. Martinez, James Mitchell, Afredie Ward, Gerald L. Appier, Raymond E. Crowell, G. John DiMatteo, William L. McMillan, Ernest E. Cloud, Carl F. Chastang, James L. Dawson, Abe Haywood, Jr., Arthur C. Cano, Lyle R. Eckhart, Friedrich K. Wacker, Joseph L. Valle, Ronald G. Woodmansee, Kenneth E. Leffler,

A. G. Marquardt, Jesse E. Dortch, Sherman A. Jones, Frederick M. Heinzman, Claude M. Thomas, Sam J. Shandra, Ralph L. Hammond, Buford W. Lee, Bernard D. Wilborn, Garold A. Young, Aaron Battista, Roland H. McCoy, James H. Allen, Warren T. Johnson, Charles A. Russell, Harry J. Smith, Robert F. Dyer, Richard B. Stapp, Allan P. Francies, David P. Roth, William H. Thomas, Jimmie White, Ernest M. Tell, Chester A. Brown, Clark A. Nichols, James B. Dodson, Norval T. Campbell, Samuel A. Woods, Booker T. Woods, Laurence T. Widgins, Alan P. Busic, Joseph E. Caudle, Clarence A. Edwards, Steven J. Repcik, Thurston E. Best, David R. Hamilton, Robert J. Shipley, Harry F. Jenkins, Loremer S. Cross, Willie E. Coleman, David L. Ellis, Louis B. Kingston, Larry D. Menges, Aaron A. Bryant and George E. Brackens, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on November 7, 1979.

OPINION BELOW

The opinion of the Court of Appeals is reported at 607 F.2d 1276 and appears in the Appendix to this petition [A-7 to

A-23]. No opinion was rendered by the District Court for the Central District of California; that court's findings of fact, conclusions of law and judgment also appear in the Appendix [A-1 to A-6].

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on November 7, 1979. No petition for rehearing was filed. This petition for certiorari will be filed on or before February 5, 1980, timely under 28 U.S.C. § 2101(c). This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether in an action for sex discrimination in employment under the Equal Pay Act of 1963 and the Equal Employment Opportunity Act of 1964, petitioners are required to prove not just that the employer discriminates against them on the basis of sex, but, further, that the employer discriminates in the same way against all employees of the same sex as petitioners.

2. Whether a group of corrections officers who permanently staff a county jail system are disqualified from receiving pay equal to that of deputy sheriffs of

the opposite sex performing equal work under similar working conditions, because those deputy sheriffs have previously received training not received by the corrections officers (not claimed to relate to custodial work) or because the deputies may, after an average of three years of custodial work alongside corrections officers, be assigned to other work not open to corrections officers, such a patrol duty.

3. Whether it is proper under Rule 56, for the Court of Appeals to affirm summary judgment: (1) on a ground not specified in the District Court's findings of fact or conclusions of law; (2) by approving the evidence of the moving party concerning relative job duties and training, where such evidence was based on job specifications and two summary affidavits by a single supervisory officer, while (3) describing petitioners' evidence opposing summary judgment as limited to one affidavit "of a fellow petitioner named Skaggs" containing "conclusionary" statements, notwithstanding that petitioners' evidence actually comprised (besides the Skaggs affidavit) three depositions, including the deposition of one of the four

highest ranking command officers in the Sheriff's Department.

STATUTORY PROVISIONS INVOLVED

United States Code, Title 29, § 206(d)(1):

No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

United States Code, Title 42:

§ 2000e-2. Unlawful employment practices - Employer practices

(a) It shall be an unlawful employment practice for an employer —

. . . .

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

STATEMENT OF THE CASE

Petitioners, 129 male corrections officers employed by defendants, brought these actions for sex discrimination in employment under the Fair Labor Standards Act (Equal Pay Act of 1963) [29 U.S.C. § 206(d)] and the Equal Employment Opportunity Act of 1964, Title VII of the Civil Rights Act [42 U.S.C. § 2000e-2]. Petitioners, together with female and male deputy sheriffs, staff the jails and camps comprising the detention system of Los Angeles County. Petitioners' work requires skill, effort and responsibility equal to that done by

female deputy sheriffs (and to a large extent, by male deputy sheriffs), and is performed under similar working conditions, although for substantially less money.

Jurisdiction in the District Court was based on 29 U.S.C. §§ 216(b) and 217; 28 U.S.C. § 1337; and 42 U.S.C. § 2000e-5(f)(3).

Respondents moved for summary judgment on the grounds that: (1) the wage differential between petitioners and the female deputies was "not based on sex," since male deputy sheriffs assigned to work in the same detention facilities also do the same work as petitioners and the same work as female deputy sheriffs while receiving the same pay as female deputies; and (2) that the wage differential between petitioners and the female deputies is based on a "factor other than sex," namely a "bona fide training program" [29 C.F.R. § 800.148].

Respondents' motion was based on two affidavits by the same supervisory office (John Knox, chief of the administrative division) and upon some job specifications.

Petitioners' opposition to summary judgment was based on: (1) the deposition

of Assistant Sheriff William Anthony, (2) the deposition of Sheriff's Captain Thomas Farrell; (3) the deposition of (female) Deputy Leair Cooke; and (4) the affidavit of petitioner Robert Skaggs. [C.T. 346, 241-246; also representation of respondents at the hearing to the court and counsel that the original depositions of their employees had been filed or would be filed immediately.]

The District Court took respondents' motion for summary judgment under submission without argument and granted it without filing any memorandum of opinion. The District Court's conclusions of law [see Appendix, p. A-3 to A-4] provide in part:

> 5. Defendants do not discriminate between male and female deputy sheriffs in relation to wages.
>
> 6. Plaintiffs may not compare themselves to the subclass of female deputy sheriffs in order to establish a sex discrimination case.
>
> 7. Plaintiffs in order to establish a prima facie case of sex discrimination must compare themselves with the entire class of deputy sheriffs.

The Court of Appeals approved the District Court's conclusion that petitioners "could not compare themselves to the subclass of female deputy sheriffs," but must compare themselves "to the entire class of deputy sheriffs" [Appendix A-13 to A-14], and that important differences in training, subsequent job assignments, etc., prevented petitioners from comparing their job to that of any deputy sheriffs.

In discussing unfavorably petitioners' "attempting to paint a picture of conflicting evidence," the Court of Appeals was apparently under the impression that petitioners' attempt consisted of one affidavit, overlooking almost the whole of petitioners' evidence in opposition to summary judgment: the depositions of Assistant Sheriff William J. Anthony, Captain Thomas Farrell and Deputy Leair D. Cooke (discussed below).

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF THIS COURT AND OF OTHER COURTS OF APPEALS AS TO THE PROPER INTERPRETATION OF 29 U.S.C. § 206(d)(1).

Section 206(d)(1) of Title 29 provides that no employer may discriminate "between

employees on the basis of sex by paying wages to employees ... at a rate less than the rate at which he pays wages to employees of the opposite sex." To the best of our knowledge, it has never been held that a plaintiff under the Equal Pay Act or under Title VII is required to prove, by way of establishing a case of sex discrimination in employment, that the employer not only discriminates against that plaintiff or group of plaintiffs but also that the employer discriminates against all employees of plaintiff's sex. The contrary has been held several times.

Corning Glass Works v. Brennan, 417 U.S. 188, 205-208, 94 S.Ct. 2223, 41 L.Ed.2d 1, 16-17 (1974), emphatically disapproved the notion that the employer can cure an existing case of wage discrimination "by allowing some - or even many - women to move into the higher paid night jobs," since that manuever would have left many women still performing equal work for less pay, notwithstanding that another group of women (newly admitted to night jobs) were making the correct amount.

Exactly the same rule had been reached by each of the circuits that addressed the problem. Shultz v. American Can

Co.-Dixie Products, 424 F.2d 356, 359 (8th Cir. 1970); Hodgson v. Square D Co., 459 F.2d 805, 808-809 (6th Cir. 1972); Hodgson v. Miller Brewing Co., 457 F.2d 221, 226-227 (7th Cir. 1972).

None of those cases could have been decided as they were if each plaintiff had been expected to prove that her employer discriminated not only against her but against all other employees of the same sex. If such were the rule, each employer would have been safe in promoting a few women (or one woman) to the higher paid job since (according to this curious reasoning) the remaining women would no longer have a case, not being able to prove any more that the employer discriminated against all women.

While few opportunities have apparently arisen to adjudicate the rule now adopted by the Ninth Circuit in the context of prima facie cases, the results reached have thus far been consistent with Corning, and not with the Ninth Circuit. Board of Regents of the University of Nebraska v. Dawes, 522 F.2d 380, 384 (8th Cir. 1975), *cert. den.*, 424 U.S. 914 (1976), held, in a declaratory relief action concerning the rights and status of men and

women employees under the Equal Pay Act, that when the University established a formula for determining a minimum salary schedule for one sex, based on specific criteria, it would be a violation of the Equal Pay Act to refuse to pay employees of the opposite sex the minimum required under the formula. The court said:

> It is, of course, true that there were and are male and female teachers who receive salaries in excess of those obtained by applying the formula. It may even be that a careful comparison of these professionals would uncover inequities as between the sexes, but we are not concerned with that problem on this appeal. *It is not necessary to prove that all of the persons of one sex employed by a single employer are discriminated against to establish a violation of the law. It is sufficient to show that some are.* [emphasis added]

The Fifth Circuit said substantially the same thing in Hodgson v. American Bank of Commerce, 447 F.2d 416, 421 (5th Cir. 1971), holding that the mere fact that two women note tellers, with nine years experience, were paid $5 a month more than

male note tellers did not preclude a finding of wage discrimination against other women tellers who made less. The court said: "To hold otherwise is to ignore clear reality and provide employers with the easy method of evading the Act's prohibitions ...."

In Marshall v. J. C. Penney Co., Inc., 464 F.Supp. 1166, 1193 (N.D. Ohio 1979), the court held that the amount of a wage differential is of no importance to the issue of liability under the Equal Pay Act, and, similarly, that it is not significant that some women earn more than some men.

In the present case, the entire detention system of Los Angeles County was staffed by approximately 189 corrections officers (all males), 233 female deputy sheriffs and 768 male deputy sheriffs [CT 301-302]. Since (for reasons discussed below) the evidence shows that petitioners' work is duplicated by the female deputy sheriffs (on a woman-for-man basis) and since those groups are comparable in size and easily identifiable, there is no reason why they cannot properly be compared for purposes of 29 U.S.C. § 206(d)(1). The Ninth Circuit's opinion comes

down to the simple proposition that the corrections officers cannot recover even though they do the same work as female deputy sheriffs, for less money, because they will never be able to prove that the County of Los Angeles discriminates equally against all male employees: the male deputy sheriffs, after all, are paid the same as female deputy sheriffs. That would seem a bad rule; but whether it is or not, it is clearly contradictory to the rule this Court laid down in Corning Glass Works v. Brennan, 417 U.S. 188, 205-208 (1974). That is a reason why this Court should grant certiorari.

II. THE MANNER IN WHICH THE COURT OF APPEALS AFFIRMED THIS SUMMARY JUDGMENT MAY PRESENT AN APPROPRIATE CASE FOR THE EXERCISE OF THIS COURT'S SUPERVISORY POWERS

The District Court limited its findings and conclusions to the narrow point that petitioners could not compare themselves to the "subclass" of female deputy sheriffs, but were required rather to "compare themselves with the entire class of deputy sheriffs." The District Court did not find or conclude that on the basis of any

actual comparison petitioners had failed to show that they performed work equal to that performed by deputy sheriffs. Similarly, the District Court did not find that, by reason of different training or subsequent duty assignments, deputy sheriffs performed substantially different work from that of corrections officers.

The Court of Appeals affirmed, however, not only on the ground that petitioners had failed to prove discrimination against employees of their own sex (male deputy sheriffs) outside petitioners' own classification, but on the further ground that deputy sheriffs as a group were so different from corrections officers - because of different training, subsequent duty assignments and the possibility of being called away from jail duty for current emergencies - that it was not even possible for corrections officers to compare themselves to deputy sheriffs.

To do this, the Court of Appeals ignored certain widely-perceived issues common to Equal Pay cases as well as the rules usually applied to those problems in other circuits. For example, it is generally thought that a court should be concerned with *actual* job requirements and perform-

ance, rather than job specifications and titles. Hodgson v. Miller Brewing Co., 457 F.2d 221, 227 (7th Cir. 1972); 29 C.F.R. § 800.121. Similarly, extra training or skills possessed by one group and not the other may not *always* be determinative where the duties actually performed fail to require or utilize those additional skills. Similarly, "flexibility" may not be sufficient to justify unequal wages without a showing by the employer of the frequency and manner in which that quality is really used.

Peltier v. City of Fargo, 533 F.2d 374, 377 (8th Cir. 1976), a closely analogous case, involved a 50% wage disparity between female and male car-markers [meter persons?] employed by the Fargo Police Department. The Eighth Circuit applied generally accepted Equal Pay Act decisions to the issues which the Ninth Circuit ignored in this case and concluded that differences in training between female car-markers and male car-markers (the latter possessing the skills and training of patrol officers and the capability of performing different jobs) were not sufficient to justify the discrepancy in their salaries. By contrast, the Ninth Circuit

simply wrote a result without reference to the rules mentioned above. It did so on a record devoid of evidence on whether the deputy sheriffs' extra training is relevant to work in the detention system (where corrections officers work) rather than the other divisions in the Sheriff's Office, and devoid of evidence as to how often, if ever, the average deputy sheriff in the custody division can expect to be called away from jail duty to suppress a riot in Watts.

The Court of Appeals also overlooked three depositions filed by petitioners in opposition to the motion for summary judgment. These were presented to the District Court and to the Court of Appeals and were subjected to detailed analysis in Appellant's Opening Brief [pp.11-17]. Deputy Leair Cooke, having done three tours of duty in the female parts of the detention system, and having worked in other parts alongside male corrections officers, testified to a lengthy, detailed list of duties performed by both groups. She could not think of any jobs done by female deputy sheriffs which are not also done by male corrections officers, apart from the minor point that new female in-

mates received by female deputies have not been pre-screened, while male inmates received by male corrections officers have been.

Assistant Sheriff Anthony (second highest non-elected officer in the Los Angeles Sheriff's Office, with 30 years experience) went through a similar comparison of duties and testified that with three minor exceptions, all the custody division jobs being done by corrections officers were also done by some deputy sheriffs.

Captain Thomas Farrell (28 years experience in the department) testified to the similarity of duties of corrections officers and deputy sheriffs, noting minor exceptions.

Respondents' affidavits concerning differing duties outside the jail system were in fact contradicted, partly by respondents' witness in his own affidavits, partly by petitioner Robert Skaggs on the basis of his personal observation and experience, and partly by Captain Farrell and Deputy Cooke [discussed in Appellants' Opening Brief pp. 15-17].

Even a casual review of the page and line references to these depositions, set

APPENDIX

JOHN H. LARSON, County Counsel
PHILIP H. HICKOK, Deputy County Counsel
648 Hall of Administration
500 West Temple Street
Los Angeles, California 90012
(213) 974-1894

Attorneys for Defendant

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WILLIAM R. RUFFIN, et al., Plaintiffs, v. COUNTY OF LOS ANGELES, et al., Defendants.	NO. CV-76-0376-F
SHERMAN A. JONES, et al., Plaintiffs, v. COUNTY OF LOS ANGELES, et al., Defendants.	NO. CV-76-0566-F
DAVID L. ELLIS, et. al., Plaintiffs, v. COUNTY OF LOS ANGELES, et al., Defendants.	NO. CV-76-2381-F ~~PROPOSED~~ FINDINGS OF FACT AND CONCLUSIONS OF LAW Dept: Courtroom 15 Date: March 21, 1977 Time: 10:00 AM

Defendants, The COUNTY OF LOS ANGELES and PETER J. PITCHESS, SHERIFF OF THE COUNTY OF LOS ANGELES, by and through its counsel of record, submit to the court the following proposed findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiffs in the above-entitled action are currently employed by the County of Los Angeles in the position of corrections officers.

2. Plaintiffs are all employed in the Sheriff's Department of the County of Los Angeles.

3. Plaintiffs are all male.

4. Defendants COUNTY OF LOS ANGELES and PETER J. PITCHESS employ personnel in the position of deputy sheriff for the County of Los Angeles.

5. Defendants COUNTY OF LOS ANGELES and PETER J. PITCHESS employ both males and females as deputy sheriffs for the County of Los Angeles.

6. Approximately eleven percent of the deputy sheriffs employed by the COUNTY OF LOS ANGELES and PETER J. PITCHESS are female; approximately eighty-nine percent of the deputy sheriffs employed by the COUNTY OF LOS ANGELES and PETER J. PITCHESS are male.

7. Both male and female deputy sheriffs are paid equally for their work by defend-

ants COUNTY OF LOS ANGELES and PETER J. PITCHESS.

8. Both male and female deputy sheriffs perform the same work, have the same employee benefits and receive the same promotions without regard to their sex.

9. Corrections officers employed by defendants COUNTY OF LOS ANGELES and PETER J. PITCHESS are paid less than deputy sheriffs.

CONCLUSIONS OF LAW

1. This court has jurisdiction of the parties and of the subject matter of this proceeding under the Equal Employment Opportunity Act, 42 U.S.C. §2000(e)-5(f)(3).

2. This court has jurisdiction of the parties and of the subject matter of this proceeding under 28 U.S.C. §1337.

3. In order to be entitled any relief from this court, plaintiffs must prove that defendants have discriminated against them on the basis of sex by paying wages to them at a rate less than the rate at which defendants pay wages to employees of the opposite sex. 29 U.S.C. §206-D.

4. In order for relief under 42 U.S.C. §§2000(e) et seq., plaintiffs must prove that defendants limited, segregates or classified plaintiffs in such a way which would deprive them of equal employment opportunities because of their sex.

5. Defendants do not discriminate between

male and female deputy sheriffs in relation to wages.

6. Plaintiffs may not compare themselves to the subclass of female deputy sheriffs in order to establish a sex discrimination case.

7. Plaintiffs in order to establish a prima facie case of sex discrimination must compare themselves with the entire class of deputy sheriffs.

8. Plaintiffs have failed to prove they are discriminated against in their employment or in their compensation on the basis of their sex.

9. Plaintiffs are entitled to no relief under either 29 U.S.C. §§201 et seq. or 42 U.S.C. §§2000(e) et seq.

10. It is the conclusion of this court that plaintiffs' amended complaint is dismissed as to both the first and second cause of action.

11. Judgment will be entered for defendants and costs taxed against plaintiffs.

IT IS SO ORDERED.

DATED: * *

WARREN J. FERGUSON, Judge
United States District Court

* No copy of the signed Findings of Fact and Conclusions of Law was served on plaintiffs. This portion of the Appendex is based on the proposed findings and on the signed Judgment in this action which states that the findings were filed the same date as the Judgment.

APPENDIX

FILED
MAY 26 1977
Clerk, U.S. District Court
Central District of California

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WILLIAM R. RUFFIN, et al., Plaintiffs, v. COUNTY OF LOS ANGELES, et al., Defendants.	)	No. CV 76-0376-F
SHERMAN A. JONES, et al., Plaintiffs, v. COUNTY OF LOS ANGELES, et al., Defendants.	)	No. CV 76-0566-F
DAVID L. ELLIS, et al., Plaintiffs, v. COUNTY OF LOS ANGELES, Defendants.	)	No. CV 76-2381-F

JUDGMENT

In accordance with the findings of fact and conclusions of law filed this date, judgment is entered in favor of defendants and against plaintiffs together with costs

assessed in the amount of $_____.

IT IS FURTHER ORDERED that the clerk forthwith serve copies of this judgment by United States mail upon counsel for the parties appearing in this action.

Dated this 26th day of May, 1977.

/s/ Warren J. Ferguson
WARREN J. FERGUSON
United States District Judge

APPENDIX

FILED
NOV 7 1979
Richard H. Deane
Clerk, U.S. Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM D. RUFFIN, et al., Appellants, v. COUNTY OF LOS ANGELES, et al., Appellees.	)	NO. 77-2532 OPINION
SHERMAN A JONES, et al., Appellants, v. COUNTY OF LOS ANGELES, et al., Appellees.	)	
DAVID L. ELLIS, et al., Appellants, v. COUNTY OF LOS ANGELES, et al., Appellees.	)	

Appeal from the United States District Court
for the Central District of California

Before: CHAMBERS and ELY, Circuit Judges, and COPPLE,* District Judge

ELY, Circuit Judge:

The appellants are 128 named corrections officers, all male, employed by the appellees, the Los Angeles County (California) Sheriff and the County of Los Angeles (hereinafter the "County"). They appeal the summary judgment dismissal of their employment discrimination claims against the County.

Specifically, the corrections officers claimed that employment practices of the County violated both Title VII of the Equal Employment Opportunity Act (42 U.S.C. §2000(e)) and the Equal Pay Act (29 U.S.C. §206(d)) because female deputy sheriffs who are assigned to work in County detention facilities are compensated at a higher rate of pay than are corrections officers, all of whom are male. Male corrections officers, so appellants contend, perform tasks involving essentially equal skill, effort, and responsibility as those performed by female deputies who work in the same facilities.

We affirm.

---

* The Honorable William P. Copple, United States District Judge, District of Arizona, sitting by designation.

I.

The undisputed facts are as follows:

At the time the suit was instituted, the County employed more than 5,400 deputy sheriffs, and 591 of those were female. Of the total number of deputy sheriffs, 1,001 were assigned to the Custody Division of the Sheriff's Department, the division responsible for operating the twelve detention facilities operated by the County.

Of the 1,001 deputy sheriffs assigned to the Custody Division, 768 were males and 233 were female. Virtually all deputy sheriffs received their first assignment to the Custody Division after completion of their law enforcement academy training. This policy of assigning new deputies to work in the detention facilities prior to becoming eligible for service in any of the other seven divisions of the Sheriff's Department, according to the County, enabled the deputies to gain skills in personal interaction in a controlled environment. The County did not regard the initial Custody Division assignment strictly as a training program, but rather as a condition precedent to eligibility for later assignment elsewhere in the Sheriff's Department. Some deputies, however, worked in the Custody Division for their entire careers with the Sheriff's Department.

It is not disputed that male and female deputy sheriffs performed essentially the same work while assigned to the Custody Division and received equal wages, benefits, and promotions. Likewise, it is undisputed that the various jobs performed by deputy sheriffs, both male and female, at the detention facilities were assigned on the basis of experience and rank. Moreover, the corrections officers have conceded that the County does not presently discriminate between male and female deputy sheriffs.

The position of corrections officer, held by all the appellants, is distinct from that of the position of deputy sheriff. Corrections officers were first hired in the early 1960s to fill an expressed need by the County for manpower in the County's jails. The newly created position enabled the County to transfer male deputy sheriffs, who otherwise would not have been available for transfer outside the Custody Division, to other work stations within the Sheriff's Department, such as to field work and patrol duty assignments.

Before the inception of the corrections officer program. only deputy sheriffs supervised prisoners in County detention facilities. During the time the County was actively hiring corrections officers, female deputy sheriffs were assigned to work

primarily in the detention facilities and generally were not assigned to field work and patrol duty. As the County explains, it never hired female corrections officers because, under its since-abandoned policy of not assigning female deputies to field work and patrol duty, employing additional females as corrections officers would not have allowed any female deputy sheriffs to transfer out of the Custody Division.

The County was able to attract a sufficient number of qualified applicants to fill the newly created corrections officer positions by relaxing the qualifications required for deputy sheriffs. For example, the upper age limit for deputy sheriff applicants, male and female, was 35 years, while that for corrections officer applicants was 53 years. Likewise, the physical requirements established for corrections officers were less rigorous than those demanded of deputy sheriffs, male or female. Moreover, even to be eligible to apply for a deputy sheriff position, a candidate first must have had completed a basic law enforcement training program approved by the Commission on Peace Officers Standards and Training. No comparable minimum training or experience was required of corrections officer applicants.

During that period of time when the County predominately limited female deputy sheriffs to Custody Division duties, male corrections officers and female deputies were given substantially similar post-employment instruction in a Sheriff's Academy training program. Male deputies, who were eligible for later assignment to other divisions, received additional training appropriate to field work and patrol duty.

Prior to the inception of this suit, the County altered its policy, and female deputies no longer were limited to Custody Division assignments. Accordingly, the post-employment training of female deputies was increased to the same level as that of male deputy sheriffs. In contrast, corrections officers continue to receive different training for a shorter period of time, and they are yet employed exclusively in the County's detention facilities.

In addition to the unequal job qualifications and the differing post-employment training received by the two classes of employees, other differences, significant in our consideration, between corrections officers and deputy sheriffs are (1) the availability of deputies for transfer out of the Custody Division to other work stations in the Sheriff's Department, (2) the

potential for advancement enjoyed by deputies and not by corrections officers, and (3) the greater authority vested by the County in respect to deputies which extends beyond the jailhouse gates.

II.

After reviewing the pleadings of the parties and the affidavits submitted in connection with the summary judgment motions, the District Court concluded that the appellants had failed to prove that the County discriminated against them on the basis of sex either in their employment or in their compensation. Among its Conclusions of Law, the District Court held that appellants, in order to prove their claims of sex discrimination, could not compare themselves to the sub-class of female deputy sheriffs. Rather, the District Court concluded that appellants should have been compared to the entire class of deputy sheriffs. It is these Conclusions of Law that appellants contend were erroneous.

Very briefly stated, the argument of the appellants is that their pleadings and affidavits raised genuine issues of fact as to whether female deputy sheriffs and corrections officers were a class of County employees separate and apart from male deputy sheriffs. Appellants claim that

their showing of the many similarities of function between female deputies and corrections officers and of the fact that, in the past, the post-employment training given to female deputies more closely approximated the training given to corrections officers than that given to male deputy sheriffs established a prima facie case of sex discrimination under both Title VII and the Equal Pay Act. Thus, so appellants contend, the summary judgment against them should not stand.

We disagree. The appellants' contention wholly ignores many uncontroverted factual differences between the corrections officer and deputy sheriff positions, differences which defeat, as the District Court rightly concluded, the appellants' argument that female deputy sheriffs are "similar," for Title VII and Equal Pay Act purposes, to corrections officers.

In reaching our conclusion, we have not disregarded the fundamental proposition that, in reviewing the District Court's grant of summary judgment motion in favor of the County, all permissible inferences properly to be drawn from the record must be drawn in favor of the non-moving party. Abramson v. University of Hawaii, 594 F.2d 202, 208 (9th Cir. 1979); British Airways Board v. Boeing Co., 585 F.2d 946, 951 (9th

Cir. 1978), cert. denied, ___ U.S. ___, 99 S.Ct. 1790 (1979); Neely v. St. Paul Fire and Marine Insurance Co., 584 F.2d 341, 343 (9th Cir. 1978).

Under Fed. R. Civ. P. 56(c), a summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." If the movant satisfies his initial burden of demonstrating the absence of a genuine issue of fact, the burden then shifts to the opponent to come forward with specific facts showing that there remains a genuine factual issue for trial. Fed. R. Civ. P. 56(e). The evidence offered in opposition to the motion for summary judgment must be "significantly probative" as to any fact claimed to be disputed. First National Bank of Arizona v. Cities Service Co., 391 U.S. 253, 288-90 (1968); British Airways Board v. Boeing Co., supra, 585 F.2d at 951; Neely v. St. Paul Fire and Marine Insurance Co., supra, 584 F.2d at 344. "Where it is clear from the evidence presented at the hearing on a motion for summary judgment that the movant would be entitled to a directed verdict were the

case to proceed to trial," summary judgment ordinarily should be granted. Neely v. St. Paul Fire and Marine Insurance Co., supra, 584 F.2d at 344.

In attempting to paint a picture of conflicting evidence, appellants point to certain statements of one of their affiants, a fellow appellant named Skaggs, who claimed that corrections officers "routinely" pursued escapees outside detention facilities, "routinely" worked outside detention facilities in connection with riots in Los Angeles, and "routinely" investigated crimes occurring in the jails. These conclusory statements of Skaggs were offered in rebuttal to the County's factual demonstration that the responsibilities and duties of deputy sheriffs, male and female, exceeded those of corrections officers. We do not view Skaggs' affidavit as having satisfied appellants' burden of adducing specific facts rising to the level of "significantly probative" evidence (see First National Bank of Arizona v. Cities Service Co., supra, 391 U.S. at 288-90) necessary to counter the County's initial showing that the differential between corrections officers' and deputy sheriffs' wages was based on a factor other than sex. The County offered explicit evidence by way of affidavits and published job specifications de-

tailing its employment policies. The fact that Skaggs, as he averred in his affidavit, may have "once" pursued escapees or "once" aided in riot control outside the County's detention facilities in no way contradicts the County's showing that corrections officers' authority was, as it always has been, limited to the County jail facilities or that the duties of the corrections officers were, as always, carried out under the direction and supervision of the Sheriff's sworn personnel.

In short, our review of the record compels us to the conclusion that, at most, appellants demonstrated only that the County at one time in the past treated male and female deputy sheriffs differently. Such "discrimination" took the form of a policy preventing female deputies from transferring to patrol duty and field work assignments. Possibly, female deputies may have been able to frame a cognizable claim under either Title VII or the Equal Pay Act based on the County's past policies.[1/] Such a showing, however, does not entitle appellants to bootstrap their job grievances with the County into an employment discrimination claim rooted in federal law. We hold simply that the County's past practices as to its female deputy sheriffs, however ill-conceived,[2/] may not serve as a founda-

tion for this suit brought under Title VII and the Equal Pay Act.

As Officer Skaggs' own statement attests:

> The difference [between the corrections officer and deputy sheriff position] was this: At all times involved in this action, women have been willing to do the work required of a female deputy sheriff in return for the deputy sheriff's pay. But men have not been equally willing to do this work for the same pay. In fact the job description of "correction officer" was drawn up because of the simple fact that men could not be hired in sufficient numbers to fill funded vacancies in the Los Angeles County Sheriff's office. Money and hiring authority were available but they could not fill the jobs. Consequently, the department took some of the duties normally assigned to deputy sheriffs and created a new job specification to do those duties. The duties in question were custodial, and the specification was correction officer. They are paid less money for this job, and are still doing so. (Emphasis added.)

More than anything else, the foregoing statement supports that which the County has argued from the beginning, i.e., that the involved pay differential was not sex-based. Rather, the difference in pay between corrections officers and deputy sheriffs can best be explained on other grounds, such as job qualifications, which were relaxed in order to attract sufficient ap-

plicants to fill vacancies in the County's jails, and job responsibilities, which for deputy sheriffs, extend beyond mere custodial duties.

AFFIRMED.[3/]

FOOTNOTES:

1.

The Equal Employment Opportunity Act of 1972 (Pub. L. No. 92-261, 86 Stat. 103) (amending the Civil Rights Act of 1964), 42 U.S.C. §2000(e)) extended the coverage of Title VII to units of state and local governments. Two years later, the Equal Pay Act (29 U.S.C. §206(d)) was extended to apply to state and local governments by the Fair Labor Standards Amendments of 1974 (Pub. L. No. 93-259, 88 Stat. 55).

The record is unclear as to just when the County abandoned its employment policy of restricting female deputy sheriffs to other than patrol duty and field work assignments. Likewise, we do not find an indication in the record as to exactly when the County began its more intensive training program for female deputies. We do note that if the County's employment policies affecting its female deputy sheriffs were altered prior to the respective adoption dates of the two amendments, above specified, the female deputy sheriffs most probably could not have presented cognizable claims under the statutes. See Hazlewood School Dist. v. United States, 433 U.S. 299, 309 (1977).

We also point out that appellants' claim is similarly limited by the respective adoption dates of the two amendments. Much of appellants' claim was centered upon the assertion that female deputy sheriffs were more like corrections officers than male deputy sheriffs because of the similarity of training given the female deputies and the corrections officers. But the appellants' written brief in our court indicates that this training discrepancy between male and female deputy sheriffs was discontinued in the early 1970s. Appellants' Opening Brief at 20. Quite possibly then, much of the so-called discriminatory practices seized upon by appellants as a foundation of their suit had been abandoned before either the Equal Pay Act or Title VII became applicable to state and local governments.

2.

The County has not attempted to defend the wisdom of its corrections officer program. In fact, the County has conceded that it is presently phasing out corrections officers, and it is now employing only deputy sheriffs. As the following colloquy, from the deposition of Assistant Sheriff Anthony, makes clear, the corrections officer

position was never intended to be a career position within the Sheriff's Department:

> Q. Why is it that the Corrections Officer category is in effect a dead-end job in terms of promotion? I guess I should ask you first, is it a fair statement that the Corrections Officer is a dead-end job promotion-wise?
>
> A. Oh, yes, it is.
>
> Q. It has no rank structure?
>
> A. No. No career path was ever laid out for a Corrections Officer.
>
> Q. Was it originally conceived as a temporary function?
>
> A. I'm not sure what the original intent was at all except that it was a means to fill a need for some bodies, and they hired some. There wasn't a great deal of thought, unfortunately, that went into the Corrections Officer program. It was an easy way out of a situation, and they went that way, and there was never any -- Nobody sat down and did any deep thinking about what happens when these people come with us for a while and they reach their maximum step of pay; where do they go on for challenges and things like that. That was just never really thought ought [sic]. It was an ill conceived program from the very beginning.
>
> * * * *
>
> It was a dead-end position when it was conceived. Unfortunately, Corrections Officers didn't realize this. Nobody gave it too much thought when they hired people. That's unfortunate.

The corrections officers negotiated with the County several times in an attempt to persuade the County to reclassify their positions to those of deputy sheriffs. The County rejected the suggestion. The appellants have conceded that "most of them [the corrections officers] could not qualify [for the deputy sheriff position] without a rule change (the upper age limit for deputies is 35 [years], for corrections officers, 53 [years])." Appellants' Opening Brief at 21. Their overtures for a change having been rejected, the appellants then brought their suit claiming sex discrimination.

Because of the result we have reached, concluding that appellants did not adequately demonstrate discrimination against them because of their sex, it is unnecessary to reach the constitutional question raised of whether the Equal Pay Act permissibly may be extended to cover units of state and local government in light of National League of Cities v. Usery, 426 U.S. 833 (1976). There, the Supreme Court held that the overtime and minimum wage provisions of the Fair Labor Standards Act (FLSA) could not be applied to state and local governments as an excercise [sic] of the federal power to regulate interstate

commerce. The Court held that such an extension operated "to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions," (id. at 852) and, as such, was not within Congress' authority under the Commerce Clause.

We do note, however, that the Courts of Appeals that have reached the constitutional question have considered National League of Cities to have decided only the limited issue raised by the extension of overtime and minimum wage standards to state governments. The trend has been to uphold the 1974 amendments as a legitimate exercise of congressional power, either under Section 5 of the Fourteenth Amendment (see Marshall v. Owensboro-Daviess Cty. Hosp., 581 F.2d 116, 119-20 (6th Cir. 1978); Usery v. Charleston Cty. School Dist., 558 F.2d 1169, 1170-72 (4th Cir. 1977); Usery v. Allegheny Cty. Inst. Dist., 544 F.2d 148, 155-56 (3d Cir. 1976), cert. denied, 430 U.S. 946 (1977), or under the commerce clause (see Pearce v. Wichita Cty., City of Wichita Falls, Texas, Hosp. Bd. 590 F.2d 128, 132 (5th Cir. 1979); Marshall v. City of Sheboygan, 577 F.2d 1, 6 (7th Cir. 1978)).